

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.05.2007

+ **WP(C) No.2293-94/2006**

ABHIJAY & ANOTHER

...Petitioners

- versus -

A.I.C.T.E. & OTHERS

...Respondents

Advocates who appeared in this case:

For the Petitioners	: Mr Sudhanshu Batra with Mr Bhuvan Gugnani
For the Respondent Nos.2, 5 & 6	: Ms Avnish Ahlawat with Ms Latika Chaudhary and Ms Nidhi Gupta
For the Respondent No.3	: Mr A. Mariarputham
For the Respondent No. 4	: Mr M.A. Siddiqui

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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| 1. Whether Reporters of local papers may be allowed to see the judgment ? | YES |
| 2. To be referred to the Reporter or not ? | YES |
| 3. Whether the judgment should be reported in Digest ? | YES |

BADAR DURREZ AHMED, J (ORAL)

1. By way of this writ petition, the petitioners, who are two in number, are seeking a writ of mandamus to be issued to the respondents to implement “the directions” issued by the respondent No.1 (AICTE) allowing lateral entry to engineering diploma holders to the second year of undergraduate engineering programmes in all approved colleges and courses in terms of the document entitled “Admission Regulations, 1992” dated 11.07.1992.

2. The petitioners are diploma holders and they sought admission to the second year undergraduate Engineering Programmes of Jamia Millia Islamia University (Respondent No.4) and the Delhi College of Engineering (Respondent No.5) and Netaji Subhash Institute of Technology (Respondent No.6). The respondent Nos. 5 and 6 are affiliated to and part and parcel of the University of Delhi.

3. Coming straightway to the Admission Regulations, 1992 which contained the guidelines for admission to Engineering Degrees and Engineering Programmes issued by the All India Council for Technical Education (AICTE) in purported exercise of the powers conferred under Sections 23 (1) and 10 (o) of the All India Council for Technical Education Act, 1987 (hereinafter referred to as 'the said Act'), the learned counsel appearing on behalf of the petitioners drew my attention to paragraph 2.0 of the said guidelines which pertain to lateral entry to Degree Engineering Programmes. The relevant portion of the said paragraph 2.0 reads as under:-

**“2.0 LATERAL ENTRY TO DEGREE
ENGINEERING PROGRAMMES**

Although Engineering diploma programmes are conceived as terminal in nature, some flexibility has to be built in, to enable the meritorious amongst diploma holders to obtain Engineering degrees. There is evidence of diploma holders pursuing an Engineering programme having performed well not only in their academic carrier but also in their jobs.

A student who has acquired a diploma in Engineering through a minimum of three years of institutional study, after 10+(Secondary School Leaving Certificate Examination) can be considered to be academically equivalent to a student who has passed the first year of the four year Engineering degree programme for which the qualifying examination is of the 12 + level.

Lateral entry for diploma holders will be allowed in the second year third semester level. Seats in addition to the sanctioned intake at first year level, limited to a minimum of 10% will be reserved for such students.”

(underlining added)

4. The learned counsel appearing on behalf of the petitioners drew my attention to Section 10 (o) of the said Act and Section 23 thereof. The same read as under:-

“10. Functions of the Council.—It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

xxxxx xxxxx xxxxx xxxxx

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education”

“23. Power to make regulations.—(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the Rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a) regulating the meetings of the Council and the procedure for conducting business threat;
- (b) the terms and conditions of service of the officers and employees of the Council;
- (c) regulating the meetings of the Executive Committee and the procedure for conducting business threat;
- (d) the area of concern, the constitution, and powers and functions of the Board of Studies;
- (e) the region for which the Regional Committee be established and the constitution and functions of such Committee.”

Referring to the said Sections, the learned counsel for the petitioners submitted that the guidelines that have been issued by the AICTE have a statutory flavour and they have to be implemented by the Universities. He referred to the decision of a learned single judge of this court in the case of **Prakash Kumar Ashiyana & Others: 2007 (93) DRJ 512** as also the Supreme Court decision in the case of **State of Tamil Nadu and Another v. Adhiyaman Educational & Research Institute and Others: JT 1995 (3) SC 136** to indicate that once the said Act came into operation, it being a Central Act, would have precedence over all other enactments which pertain to technical education.

5. With reference to the provisions for lateral entry given in the guidelines, it was contended on behalf of the petitioners that a student who acquired a diploma in engineering through a minimum of three years of institutional study after class 10 could be considered to be academically equivalent to a student who had passed the first year of the Four Year Engineering Degree Programme for which the qualifying examination would be 10 + 2. He also referred to the guidelines pertaining to lateral entry and submitted that lateral entry for diploma holders had to be allowed in the second year, third semester level and that seats in addition to the sanctioned intake at the first year level, limited to a maximum of 10% need to be reserved for such students. Reading these provisions, it was contended by him that these were mandatory and the University of Delhi as well as Jamia University were bound to follow these guidelines and accordingly, this court was requested to issue a writ of mandamus directing them to follow the same and permit the petitioners' lateral entry into the second year degree courses.

6. Mr Siddiqui, who appeared on behalf of Jamia Millia Islamia University, referred to the Supreme Court decision in the case of **Bharathidasan University and Another v. All-India Council for Technical Education & Others: 2001 (8) SCC 676** and submitted that the AICTE does not have all pervasive powers with regard to technical education imparted by universities and particularly those universities which have been set up on the

basis of Central Legislations. He submitted that the object of setting up the AICTE by virtue of the said Act was only to harness private institutions / universities which had sprung up for imparting of technical education and to ensure that proper norms and standards are followed by them both in matters of admission as well as in matters of grant of diplomas / degrees.

7. With reference to the same decision, Mr Siddiqui also submitted that, at best, insofar as Jamia University and other similarly situated Centrally established universities are concerned, the role of AICTE was merely advisory and recommendatory and it was certainly not directory.

8. Mr Siddiqui, referring to said paragraph 2.0 of the guidelines in question, submitted that, in any event, even if it is, for the sake of argument, assumed that the guidelines are directory and not merely advisory or recommendatory, the provisions would have to be read in the manner indicated in the guidelines itself. He referred to the three words “can be considered” in para 2.0 of the guidelines to indicate that even if it was a direction from the AICTE, all that it directed was that a student who had acquired a diploma in engineering through a minimum three years of institutional studies, *could be considered* to be equivalent academically to a student who had passed the first year of the four year degree course. It was in the nature of a permission granted to the universities to grant such an equivalence and not a direction that the

universities must, in all cases, consider the diploma to be equivalent to the first year of the four year degree programme. Therefore, Mr Siddiqui submitted that the guideline was not binding in that sense. He then referred to the third sub-para of paragraph 2.0 where the expression “will be allowed” was used. He interpreted this in the manner that if lateral entry for diploma holders was granted by the universities in the second year, third semester level, then the AICTE would have no objection to the same. According to him, the provisions contained in the paragraph 2.0 were merely permissive and not mandatory.

9. Thereafter, Mr Siddiqui referred to the Jamia Millia Islamia Act and referred to its objects as contained in Section 5 which granted ample discretion to the university by use of the expression “as it may deem fit”. He also referred to the provisions of Section 6 and in particular Section 6 (iii) and Section 6 (xxiv) to indicate that the university had wide discretion to determine the course of study, the manner of grant of degrees and all other powers which would go to supplement such discretion. He also referred to Section 25 to indicate that the university had power to make ordinances with regard to admissions, award of degrees, etc. He then drew my attention to Ordinance I and, in particular, to para 1.3 thereof which prescribed that candidates seeking admission to a course of study in the university were required to fulfill the conditions prescribed for it by the *Majlis-i-Talimi* (Academic Council) as published in the prospectus from time to time. The prospectus of the Faculty of

Engineering and Technology for the year 2006-07 has been annexed as Annexure-P-1 to the counter-affidavit filed on behalf of the respondent No.4. The prospectus does not contain any provision for permitting lateral entry into the four year Engineering Degree Programme. Therefore, according to Mr Siddiqui, lateral entry, as advised by the AICTE, is not permissible under the Jamia Millia Islamia Act, 1988, which is also a Central Legislation. He also referred to the minutes of a meeting held on 2nd of January, 2006 of all the departmental heads of the Faculty of Engineering & Technology which considered this very notification on which the petitioners rely upon and an extract of the minutes has been placed alongwith the counter-affidavit which clearly indicates that the said departmental heads consciously took the decision, noting the ambit and scope of the university's powers as well as those of AICTE, that lateral entry was not to be permitted because, according to Mr Siddiqui, that would compromise the standards of education imparted by the university. Mr Siddiqui also submitted that the guidelines issued under Section 10 (o) of the said Act ought to be distinguished from the directions which could be issued under Section 10 (q) of the said Act to technical institutions. While Section 10 (o) merely permitted the issuance of the guidelines, Section 10 (q) contemplated the issuance of directions. Furthermore, he submitted that Section 23 of the said Act related to the power to make regulations, but none of the powers indicated in Section 23 (2) which are indicative of the general powers granted under Section 23 (1) included the power to issue regulations of

the nature which are in question in the present petition. Therefore, the notification of 11.07.1992 can only be regarded as a guideline under Section 10 (o) of the said Act and not as a regulation under Section 23.

10. Mr Siddiqui submitted that, in any event, the object of lateral entry to Degree Engineering Programmes was to provide an avenue to the diploma holders in engineering to pursue a degree course in engineering. He submits that the Jamia University has its own programme whereby diploma holders are permitted to pursue engineering degrees and this is also another reason as to why the university thought it fit not to implement the guideline issued by AICTE.

11. Mr Mariarputham, who appears for the University of Delhi, adopted all these arguments advanced by Mr Siddiqui and made some supplemental submissions. His first submission was that the scope of the petition, as discernible from the prayer clause, was that the petitioners want a mandamus to be issued by this court in respect of a mere permissive provision. He submitted that the principles with regard to issuance of mandamus are settled and that only those petitioners can approach the court who have a right to the issuance of such a direction. There must be some mandatory provision which has not been followed in respect of which the petitioners seek a mandamus. In this regard, Mr Mariarputham submitted once again with regard

to para 2.0 of the guidelines that the expressions “*can be considered*” and “*will be allowed*” appearing therein merely indicate permission on the part of the AICTE and discretion on the part of the university to implement the same. He also submitted that the expression “*will be allowed*” appearing in the third subparagraph is merely indicative of the circumstance that, if equivalence is to be granted, then lateral entry will be permitted only in the second year, third semester and at no other point of the four year degree programme. Mr Mariarputham also submitted that in case a view is taken that the aforesaid directions are mandatory, then it would be ultra vires the Constitution of India and in particular Entry 66 List I read with Entry 25 List III read with Entry 63 List I of the VIIth Schedule to the Constitution of India.

12. Mr Mariarputham also submitted that just as in the case of Jamia University, Delhi University also has a programme whereby diploma holders can pursue degrees in engineering and, therefore, the very object of introducing the concept of lateral entry is served and it is for this reason also that the guideline issued by the AICTE need not be followed by the University of Delhi. He submitted that similar to the Jamia University's prospectus, the prospectus of the Delhi University also does not permit lateral entry.

13. Lastly, Mr Mariarputham referred to the case of **State of Tamil Nadu and Another v. S.V. Bratheep (Minor) and Others: 2004 (4) SCC 513** to

indicate that the University may fix a higher norm than that imposed by the AICTE. This was submitted in the context that the conditions imposed by the University are more stringent than that of AICTE and, therefore, they cannot be faulted.

14. Mrs Avnish Ahlawat, who appears on behalf of the respondents 2, 5 & 6 adopts the arguments advanced by Mr Siddiqui and Mr Mariarputham. She submits that the respondents 5 & 6 are affiliated to the University of Delhi and the examinations that are conducted and the degrees that are awarded are of the Delhi University. She has nothing further to add to the submissions made by Mr Mariarputham insofar as University of Delhi is concerned.

15. Nobody appeared on behalf of the AICTE, however, the learned counsel for the petitioners made detailed references to the counter-affidavit filed on behalf of the AICTE and, in particular, he referred to paragraphs 6, 9 and 10 which essentially relate that the AICTE has power under Section 10 (o) of the said Act to issue guidelines for admissions of students. References were also made to the Supreme Court decision in ***Adhiyaman Educational & Research Institute*** (*supra*) which I shall deal with presently.

16. Having heard the submissions advanced by the counsel for the parties, I shall first consider the decisions relied upon by them. On behalf of

the petitioners reliance was placed on a decision of a learned single judge of this court in the case of ***Prakash Kumar Ashiyana*** (*supra*). In the said decision, it was observed that Section 10 (o) provides for formulation of the guidelines for admission of students to technical institutes and universities imparting technical education. It was observed that it cannot be disputed that the AICTE framed the guidelines under Section 10 (o) of the said Act and that the same were duly notified on 11.07.1992 and they provide for lateral entry of diploma holders to the degree courses to the second year in the third semester level. The learned single judge referred to the decision of the Supreme Court in the case of ***Adhiyaman Educational & Research Institute*** (*supra*) with particular reference to the portion where the Supreme Court held that the AICTE Act fell under Entry 66 of List I and Entry 25 of List III of the 7th Schedule to the Constitution of India and that if the provisions of the said Act were in conflict or inconsistent with the State Act then to the extent of such inconsistency, the provisions of the State Act were void and the State could not lay down the standards and requirements higher than those prescribed by the Central Act for technical institutions and could not deny admission to applicants on the ground that they do not fulfill the higher standards / requirements. The Supreme Court further held that since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country as without this the coordinated and integrated development of technical education all over the country would not be possible

and would defeat one of the main objects of the said Act.

17. In my view, the decision in ***Prakash Kumar Ashiyana*** (*supra*) is not relevant for the purposes of the present case. This is because, firstly, the said decision was not concerned with any university or degree course. It was concerned with a diploma course, although the same notification was under consideration. Secondly, it merely reflected the opinion of the Supreme Court in ***Adhiyaman Educational & Research Institute*** (*supra*) which, in turn, was with regard to the conflict between the said Act which was a Central Act and the Madras University Act, 1923 which was a State Act. It is in that context that the Supreme Court in the case of ***Adhiyaman Educational & Research Institute*** (*supra*) held that the State Legislation would have to give way to the Central Act and, therefore, higher standards could not be prescribed than the ones prescribed by AICTE. In the present case, neither the decision in ***Prakash Kumar Ashiyana*** (*supra*) nor the Supreme Court decision in ***Adhiyaman Educational & Research Institute*** (*supra*) is applicable because the universities, i.e., Jamia Millia Islamia and University of Delhi are both universities constituted under Central Acts. Therefore, the argument of conflict between the State Act and Central Act and the former having to give way to the latter is not available to the petitioners in this case.

18. I shall now refer to the decision of the Supreme Court in the case of ***Bharathidasan University*** (*supra*) which was relied upon by Mr Siddiqui. It was argued before the Supreme Court in view of the provisions of Section 10 of the said Act that the AICTE would have pervasive control over the universities also in addition to it having control over technical institutions. This argument was repelled by the Supreme Court in the following manner:-

“8. We have bestowed our thoughtful consideration to the submissions made on either side. When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely activated by some assumed objects or desirabilities, the courts cannot adorn the mantle of the legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure and scheme underlying the law. In the Statement of Objects and Reasons for the AICTE Act, it is specifically stated that AICTE was originally set up by a government resolution as a national expert body to advise the Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but, “However, in recent years, a large number of private engineering colleges and polytechnics have come up in

complete disregard of the guidelines, laid down by the AICTE” and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred upon AICTE to play its role more effectively by enacting the AICTE Act.

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10. Since it is intended to be other than a university, the Act defines in Section 2(i) “university” to mean a university defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and also to be inclusive of an institution deemed to be a university under Section 3 of the said Act. Section 10 of the Act enumerates the various powers and functions of AICTE as also its duties and obligations to take steps towards fulfilment of the same. one such as envisaged in Section 10(1)(k) is to “grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned”. Section 23, which empowers the Council to make regulations in the manner ordained therein emphatically ad specifically, mandates the making of such Regulations only “not inconsistent with the provisions of this Act and the Rules”. The Act, for all purposes and throughout maintains the distinct identity and existence of “technical institutions” and “universities” and it is in keeping tune with the said dichotomy that wherever the university or the activities of the university are also to be supervised or regulated and guided by AICTE, specific mention has been made of the university alongside the technical institutions and wherever the university is to be left out and not to be roped in merely refers to the technical institution only in Sections 10, 11 and 22(2)(b). It is necessary and would be useful to advert to Sections 10(1)(c), (g), (o) which would go to show that universities are mentioned alongside the “technical institutions” and clauses (k), (m), (p), (q), (s) and (u) wherein there is conspicuous omission of reference to universities, reference being made to technical institutions alone. It is equally important to see that when AICTE is

empowered to inspect or cause to inspect any technical institution in clause (p) of sub-section (1) of Section 10 without any reservation whatsoever when it comes to the question of universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisaged in Section 11 of the Act. Clause (t) of sub-section (1) of Section 10 envisages AICTE to only advice UGC for declaring any institution imparting technical education as a deemed university and not do any such thing by itself. Likewise, clause (u) of the same provision which envisages the setting up of a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme. All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in any of its departments or units. A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-a-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis-a-vis universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well-merited

attention and consideration in their proper and correct perspective. The ultra-activist view articulated in M. Sambasiva Rao case: 1997 (1) An L. T. 629 (FB) on the basis of supposed intention and imagined purpose of AICTE or the Act constituting it, is uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like UGC and universities irrelevant or even as non-entities by making AICTE a superpower with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them.”

(underlining added)

A reading of the above extract from the Supreme Court decision makes it clear that the Supreme Court was of the view that the role of AICTE vis-a-vis universities is only advisory, recommendatory and a guiding factor and thereby sub-serve the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. This, to my mind, makes it clear that insofar as universities are concerned and that too universities constituted under the Central Acts, the role of the AICTE even in respect of technical education imparted by the said universities would be of an advisory nature and would not be required to be followed mandatorily by the said universities. It is in this context that paragraph 2.0 of the guidelines needs to be considered. If these guidelines, as mentioned by the Supreme Court, are merely advisory and recommendatory, then clearly they are not directory and,

therefore, it would be open to the university to adopt them or not to adopt them. In such a situation, it would not be open to the petitioners to approach this court for a writ of mandamus because they do not have a right to the same. It is at the discretion of the university to adopt such guidelines or not to adopt such guidelines. As has been mentioned while recording the submissions of Mr Siddiqui and Mr Mariarputham, both the universities have considered these guidelines and have decided consciously not to adopt them so that their standards are not adversely affected. At the same time, both the universities have taken care to serve the objective of the guidelines and that is to provide an avenue for diploma holders to pursue their further studies to obtain degrees in engineering.

19. Apart from these considerations, even if it is assumed that the AICTE guidelines are directory, I would agree with the submissions made by Mr Siddiqui that the guidelines have to be read in the manner in which they have been laid down. The expressions “can be considered” and “will be allowed”, to my mind, indicate that they are suggestions and recommendations to the universities. Furthermore, it provides that it would be permissible for the university to permit lateral entry in the manner indicated in the guidelines. The said para 2.0 cannot be regarded as a binding direction even on its own meaning.

20. In these circumstances, a writ of mandamus cannot be issued and, accordingly, the writ petition is dismissed.

May 03, 2007
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BADAR DURREZ AHMED
(JUDGE)